IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4101 of 1999

with

SPECIAL CIVIL APPLICATION Nos 4103, 4105 and 4106 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVINCHANDRA J PARMAR

Versus

INDIAN PETROCHEMICALS LTD

Appearance:

1. Special Civil Application No. 4101 of 1999

MS NITA C BANKER for Petitioner No. 1

MS SAROJ J PARMAR for Petitioner No. 1

MR SN SHELAT, ADVOCATE GENERAL with MR H.A.Dave for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3,5-6

MR ND GOHIL, AGP for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 17/09/2004

ORAL JUDGEMENT

Since identical questions of law and facts arise in these petitions, they have been heard together and are being disposed of by this common judgment.

2. Each of the petitioners in this group of petitions has been working with the respondent Nos.1 & 2 since number of years. They have filed these petitions with a prayer that their services be regularised and the respondent Nos.1 & 2 be directed to make them permanent and also grant seniority and other consequential benefits. By way of interim relief, the petitioners had prayed for being continued in service of the respondent Nos.1 & 2. While admitting these petitions, this Court had also granted an order of status quo in favour of the petitioners.

3. The petitioners in these petitions, have contended that though they are engaged by the respondent Nos.1 & 2 through the contractors, that is only a sham arrangement and in reality, respondent No.1 & 2 are the real employers. It is stated that the petitioners have been working since so many years exclusively for the respondent Nos.1 & 2 and the contractor has never sent them anywhere else. It is further stated that initially, the petitioners were recruited by one Noble Detective and Security Services Pvt. Ltd. but even when the contract was terminated and new contract was given to one Nishan Detective Security Services Pvt. Ltd., the petitioners were continued to be engaged by the respondent No.1 & 2. It is, therefore, the case of the petitioners that the respondent Nos.1 & 2 are the real employer and that the petitioners should be regularised by the said respondents. It is further stated that the contractor does not have the requisite licence to engage workmen through contract nor do the respondent Nos.1 & 2 have the licence to engage labourers through contractor.

4. On the basis of these averments, learned advocate for the petitioners Ms.Nita Banker has contended that :-

(i) the contract in this case is a sham contract and the petitioners are in fact directly engaged by the respondent Nos.1 & 2.

(ii) the fact that the respondent Nos.1 & 2 are employing the petitioners for different works

though the contract is only for maintenance work would establish that there is a direct master and servant relationship between the respondent Nos.1 & 2 and the petitioners.

(iii) the fact that there is no licence for engaging contract labour would be sufficient to establish that the petitioners are directly engaged by the respondent Nos.1 & 2.

5. On the other hand, respondents have denied the contentions raised by the petitioners in these petitions. The factum of direct employment of the petitioners by the respondent Nos.1 & 2 is disputed. It is stated, inter alia, that the petitioners are engaged through contractors, that the provisions of the Contract Labour (Regulation and Abolition) Act are not applicable to the Regional Office of the Corporation at Ahmedabad and the contractor concerned does not employ more than 10 persons and that therefore, the provisions of the said Act would not be applicable to the contractor.

6. Learned Advocate General appearing with Shri Dave for the respondent Nos.1 & 2 has contended that the petition is not maintainable since IPCL is not a 'State' within the meaning of Article 12 of the Constitution. He further submits that there are large number of disputed questions of fact involved in these petitions and that therefore, also this Court should not entertain the petitions under Article 226 of the Constitution of India. The learned Advocate General has placed on record a copy of the judgment dated 17th August 2004 passed by this Court in Special Civil Application No.2993 of 1999 wherein it is held that a petition under Article 226 of the Constitution of India would not be maintainable against IPCL. Respectfully following the the said decision, I find that these petitions are not maintainable in the present form.

7. Even otherwise, the petitions involve large number of disputed questions of facts. I have narrated some of the averments made by the respective parties in the petitions and in the affidavits in reply respectively. From the rival contentions, it is obvious that the factual averments made by the petitioners are highly disputed. By the very nature of things, the facts are contentious and disputed. It would not be possible for this Court to go into these disputed questions of fact in the writ jurisdiction exercising powers under Article 226 of the Constitution of India. When appropriate machinery has been provided by the statute

under the Industrial Disputes Act, it would always be appropriate for the parties to approach such forum before approaching this Court especially in view of involving large number of disputed questions of fact. In the case of U.P.State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh, (2004) 4 SCC 268, the Hon'ble Supreme Court has observed that the High Court erred in entertaining the writ petition of the Union at all. The dispute was an industrial dispute both within the meaning of the Industrial Disputes Act, 1947 as well as the U.P.Industrial Disputes Act, 1947. The rights and obligations sought to be enforced by the Union in the writ petition are those created by the Industrial Disputes Act. Reproducing the observations made by the Hon'ble Supreme Court in Premier Automobiles Ltd v. Kamlekar Shantaram Wadke reported in (1976) 1 SCC 496, the Hon'ble Supreme Court further observed that when the dispute relates to the enforcement of a right or an obligation created under an Act, then the only remedy available to the claimant is to get adjudication under the Act. It is further observed that it would need a very strong case for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner. It was also observed that it is an established practice that the Court exercising extraordinary jurisdiction under Article 226 should have refused to do so where there are disputed questions of fact. The Hon'ble Supreme Court further observed that the only reason given by the High Court to finally dispute of the issues in its writ jurisdiction was the factor of delay on the part of the High Court in disposing of the dispute. It was observed that doubtless the issue of alternative remedy should be raised and decided at the earliest opportunity so that the litigant is not prejudiced by the action of the Court since the objection is one in the nature of demurrer. Nevertheless, even when there has been such a delay where the issue raised requires the resolution of factual controversies, the High Court should not, even when there is delay, short-circuit the process for effectively determining the facts.

8. In view of the above ratio laid down by the Hon'ble Supreme Court, it is not possible for this Court to entertain these petitions since large number of disputed questions of facts are involved and the appropriate forum under the Industrial Disputes Act alone can decide the questions involved herein.

9. Reliance placed by the learned advocate for the petitioners on a decision in the case of Steel Authority of India Ltd. v. National Union Water Front Workers, AIR 2001 SC 3527, is also not well founded. In the said decision, the Hon'ble Supreme Court held that even when the contract labour system is abolished by issuing prohibition notification under section 10(1) of the Contract Labour (Regulation & Abolition) Act, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations. Thus even in such a case, there would not be automatic absorption as held by the Hon'ble Supreme Court in the said decision.

10. To conclude, I uphold both the objections raised by the learned Advocate General, firstly with respect to the maintainability of the petition as IPCL not being a 'State' within the meaning of Article 12 of the Constitution, secondly with respect to the maintainability of the petition on the ground of involving large number of disputed questions of fact. The petitions therefore fail and are hereby rejected. Rule is discharged in each of the petitions. Interim relief granted earlier stands vacated. In view of the fact that the petitions are not maintainable, as held above, it would not be possible for this Court to further extend the interim order granted at the time of admission of the petitions.

11. In the result, the petitions are rejected. Rule discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)